BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

IN THE MATTER OF APPLICATION NO. 2003-01 SAGEBRUSH POWER PARTNERS, LLC KITTITAS VALLEY WIND POWER PROJECT	PRE-FILED DIRECT REBUTTAL TESTIMFONY OF CHRIS TAYLOR EXHIBIT NO. 20 R (CT-R)

Q. Please describe the purpose of this rebuttal testimony.

A. I am testifying in response to the pre-filed direct testimony of Mr. Clay White.

Q. Mr. Clay White has testified that Zilkha Renewable Energy made no attempt to apply to Kittitas County in a timely manner in order to resolve "non-compliance" issues, and that Zilkha took the some five months to complete a short application. Do you agree with this characterization?

A. No. As documented in our Request for Preemption and as confirmed by Mr. White's own testimony, we first submitted a draft application to the County for staff review on 3/27/03, which is approximately ten (10) weeks after we submitted our Application for Site Certification (ASC) to EFSEC and five (5) weeks before EFSEC held its land use consistency hearing on May 1, 2003. The reason our application to the County was submitted 10 weeks after our EFSEC ASC and not earlier was that we spent that period (10 weeks) diligently working to reach an agreement with the County on the basic process and timeline for reviewing and processing our application. Given the significant and fundamental differences between our

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interpretation of the County's role in local land use consistency review pursuant to the EFSEC process and the County's interpretation, it was prudent to seek clarification prior to submitting an application to the County. The period from 3/27/03, when we submitted our first draft application to the County, until 6/25/03 when the County finally deemed our application to be "complete" was consumed by numerous attempts to revise our application and the accompanying cover letter so that the County would accept it as "complete." Much of that delay was caused by the County's refusal to accept the application on various grounds that are not laid out anywhere in their code, such as the language included in the cover letter, which I will address in greater detail later in my testimony. A more accurate characterization of the timing of our application to Kittitas County for local land use consistency review is that we submitted an application 5 weeks before the EFSEC land use consistency hearing and then spent three months trying to get the County to work with us to ascertain how the County process would relate to the EFSEC process, how we could comply with the County's new Windfarm Overlay Ordinance within the context of the EFSEC process, and ultimately to get the County to accept our application as complete.

As detailed in the Request for Preemption and the attached Chronology, we had major difficulty getting a clear and consistent response from County officials regarding the process and schedule they intended to follow for reviewing our application. The County's wind farm development regulations were new and totally untested at this time. Moreover, I believe that it is clear from Clay White's testimony that the ability to reconcile the County's ordinance and process with EFSEC review was a major conundrum, even if the County was acting in the utmost good faith.

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The wind farm siting ordinance was based on the process the County followed in approving the Mountain Star master planned resort (MPR) which was not, in our opinion, an analogous project. The areas of uncertainty in the County's review of the Kittitas Valley Wind Power Project were not limited to minor or technical issues, and included such fundamental questions as whether the County intended to develop their own EIS. County Planning Director Dave Taylor insisted that the County would need to complete its own EIS (Attachment 10, to Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development' of Applicant's Request for Preemption in the Matter of Application No 2003-01). This was in direct contrast to what County Commissioner Huston reiterated on many occasions, mainly that the County did not need to do a separate SEPA review if EFSEC was already doing this. (See Mr. Huston's comments about SEPA review which are found throughout Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development' of Applicant's Request for Preemption in the Matter of Application No 2003-01. Other basic issues that remained unresolved after months of discussions with the County included:

1) Acceptance by the County of EFSEC's jurisdiction over the siting of the Project. The County repeatedly sought to assert jurisdiction over the siting of the Project, not simply over the land use and zoning review aspects, as laid out in the EFSEC rules and statutes; and

2) The schedule and process for review of the application. We never received ANY written explanation of the County's proposed process and schedule, despite numerous requests, until January 2004, when the County submitted a

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one page flow chart in response to a direct request from EFSEC Chairman Jim Luce.

Q. Mr. White's testimony makes many references to the applications you filed with the County, and their purported insufficiency. Would you please explain this process?

A. Mr. White accurately describes the applications filed in March to June 2003 as "draft" applications, and then he attacks us for not submitting non-substantive content including landowner signatures. We had many discussions with the County staff (Mr. Hurson and Mr. White) about how we could seek zoning consistency as contemplated by the EFSEC statute and rules, while not requesting the County to make site-specific permitting (siting) decisions. Given the fact that the County's ordinance wholly consolidates a mandatory amendment of the comprehensive plan, a rezone, a mandatory "negotiated" development agreement, and finally a site-specific permit in one process undertaken by the elected officials of the County, this was a very major issue. It made absolutely no sense to us to seek permitting through EFSEC when being required by the County's ordinance to seek site-specific permit review by the County, encompassing both legislative plan and zoning determinations, as well as the very site-specific decisions reserved for EFSEC. Complicating this, the County NEVER meaningfully conceded that EFSEC had a meaningful lead agency role under SEPA. The County resisted all of our efforts to attempt to "carve out" what were clearly planning and zoning functions and what were site-specific permitting functions. Finally, the County did not adopt any provisions in its code to enable an applicant to understand what would constitute a complete application under the Wind Farm Overlay ordinance. In fact, to this day, we cannot determine whether the

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County's permitting process ordinance, applicable to all other types of land use permit applications (Chapter 15.A), is even applicable to this process.

Due to this problem, we discussed with the County staff our desire to submit draft applications. For us, this meant without signatures, and without adjoining properties being notified. Mr. White correctly testifies that the County refused to accept draft applications for review, based upon the County's disagreement over the content of ***cover letters*** submitted with the application submittals. These cover letters were drafted based upon discussions between Zilkha and County staff, and between our attorneys and Jim Hurson, and were intended to be absolutely explicit about the scope of County review in the context of EFSEC review. The County would agree with this strategy on the phone with us, then ***reject draft applications*** based upon what we believed were agreed stipulations, documented in the cover letters. These cover letters presented absolutely no impediment to acceptance of draft application materials under any permit application rules we are aware of.

Our initial and fruitless attempts to obtain a County commitment for process led us to submit administrative draft applications for County staff review only. Therefore we did not believe the applications needed to be signed, as we anticipated making revisions in response to County comments and then signing the final version to be submitted for distribution to the public. We believed in good faith that we were following County direction in filing an administrative draft. And in the context of seeking clarity about how the County's unique ordinance would dovetail with EFSEC review, we believed that review and discussion of administrative review drafts, prior to landowner and adjoining property consent and notification, was a very good idea. At the outset of this process, we genuinely believed that the County shared this view

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and shared our desire to come to terms on a reasonable process which would serve the best interests of the County, the applicant, and the EFSEC.

We did not submit a list of all property owners within 300' of the project site because these were administrative drafts. The County demanded original signatures on County forms from all of the landowners (15 total), some of whom do not reside locally. One landowner was in France at the time, and another is a long haul truck driver who was living in Tennessee at the time, which made obtaining original signatures on the County forms rather complicated. Our intent was to get a commitment from the County to the process and content of the applications before conducting the time consuming task of tracking down these parties and seeking these signatures. We did not want to delay submittal of our draft application while we sought and obtained those signatures, which would not require any substantive County review other than to confirm they existed. We certainly did not want to perform this task more than once.

The cover letter did indeed state that we were applying for County comprehensive plan and zoning review, but we stated our expectation that the County would reserve for EFSEC the actual siting permit issuance. This was a deliberate and appropriate decision on our part. As noted above, the County's posture was that they were not simply reviewing the land use and zoning issues, as requested by EFSEC (and pursuant to WAC 463-28-040 and RCW 80.50.090) but that the County was also intending to engage in the siting review, which is clearly and fundamentally within EFSEC's jurisdiction. This was the fundamental disagreement between the Applicant and the County. EFSEC had only requested the County to review the zoning and land use compliance issues associated with our EFSEC application. We did not

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understand why the County would demand that we apply for a development agreement and development permit from the County, as these are, by definition, siting documents.

We suggested ways that the County could still satisfy the requirements of its ordinance while reserving these determinations for EFSEC. Mr. Hurson ultimately rejected these proposals, and refused to suggest any other way of engaging the County in a productive way. Moreover, we discussed this process in advance of submitting the application materials with Jim Hurson, and we believed that the County understood our concerns. Yet the County then rejected application submittals based on the content of cover letters drafted to implement the understanding we believed we had with Mr. Hurson and Mr. White. In short, I strongly disagree with the accusation that there were "major flaws" within each submittal, and I dispute accusations that we were trying to delay the County process. To the contrary, we have always sought to expedite review of our project. There are many obvious business imperatives that would lead any applicant in our situation to desire timely issuance of all permits.

Q. Mr. White speculates that Zilkha "always" had a strategy to delay, and to ultimately seek preemption. Do you wish to comment on these speculative accusations?

A. Yes. First of all, it is simply speculation which I find highly objectionable, and it ignores the facts and our fruitless attempts to obtain a clear, reasonable, predictable process that would work within the EFSEC process. We did not have a "strategy" other than to seek and obtain agreement with the County regarding the basic procedural elements of their review of our application prior to submitting it. Given

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the very large capital investment the Project represents (approximately $200 million) and the considerable expense and effort involved in permitting the Project, we believe that it is obvious that an applicant would want some written assurances about the process and schedule for County review, particularly given the novel, unusual, and untested nature of the County's wind farm siting ordinance, especially when applying such a unique process in the context of an EFSEC proceeding. Furthermore, despite the many pages of testimony the County has devoted to such speculation about our purported intent to delay their process, they have not offered even one sentence of explanation as to why we would possibly "want" to delay our own project or to seek preemption. Mr. White's speculation about some sort of deliberate "strategy" on our part to delay the County's review and seek preemption is consistent with similar allegations and speculation on the part of Mr. Hurson, as documented in his email communications dating from April of 2003 (Exhibit 20 R-2 (CT-R-2), email from Jim Hurson to Chris Taylor, 4/1/03.) But the fact remains that this hypothesis makes no logical sense and is not supported by the record.

It is self evident that an applicant would desire to have the review process proceed as quickly as possible, as there are substantial direct financial and opportunity costs involved in delay. It was always Zilkha Renewable Energy's intent, from myself up to the owners of the company, to seek and obtain local land use consistency. The decision to seek preemption was a very difficult one, as we were truly committed to seeking local resolution. As the record in this proceeding, as well as Mr. White's testimony makes clear, the issue of preemption is the only issue that is in dispute between the Applicant and the County. Why would we seek to create a contentious issue that would only delay the issuance of our permit? I can not understand the basic premise behind this assertion that Mr. Hurson has been making for over a year now.

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Q. Mr. White alleges that the issuance of the Notice of Application was the "first and only action that the County had control over." Do you agree with this?

A. No. The County had control over the positions it adopted throughout the period we were discussing the application process and over the responses they provided to our draft applications. These positions, as detailed earlier and in the Request for Preemption, were at odds with the EFSEC statutes and regulations. It is simply inaccurate to say the County had no control over their actions during this period. There are many examples of this, but in the interest of brevity, I will only mention some obvious ones:

1) The County could have chosen to pursue a zoning code text amendment, as Walla Walla County did in the case of the Wallula Generating Project, and as we suggested several times.

2) The County could have reviewed the substance of our initial draft application without insisting on inclusion of signatures for an administrative draft.

3) The County could have accepted our draft application regardless of their disagreements regarding the language included in the cover letter.

The County's refusal to acknowledge EFSEC's jurisdiction and SEPA lead agency status and to confine their review to the land use and zoning issues were the primary reasons for the delays. The County has not adopted any criteria for a complete application under the ordinance, and the County has no clearly applicable criteria regarding application receipt and completeness. For us, receipt and completeness determinations were made in an arbitrary fashion. The admitted fact that the County actually rejected applications because of the content of ***negotiated cover letters***

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demonstrates the arbitrary nature of this process. We believe it demonstrates why local governments are required to adopt criteria for completeness and application acceptance, as well as reasonably predictable permitting criteria. We believe that our experience in this process also shows why it is contrary to accepted land use planning practice to combine a comprehensive plan amendment process with site-specific permitting.

Q. Mr. White alleges that Zilkha Renewable Energy "knew" that the County was "relying on the DEIS to be published" for its decision. Was this part of an agreed understanding of the County's role under SEPA?

A. No. We never agreed with the County regarding reliance upon SEPA review as this was not necessary or justified by state law or regulation. We never requested a "conclusive date." We only requested a timeline which could be implemented through EFSEC review. Until required to do so by EFSEC, the County never provided us with anything in writing regarding their schedule for review. The County even refused to comment on the draft timeline I sent in an attempt to clarify their timeline (Attachment 28, to Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01).

Q. Mr. White alleges that he believed that "there was an agreement reached on how the consistency issue would be resolved," and that "Zilkha would pursue a change in land use and zoning designation like anyone else." Is this an accurate statement?

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A. No. That level of certainty is precisely what we attempted to obtain from the County. These attempts were articulated in the cover letters, resulting in the County's rejection of application submittals (Attachment 17 and 19, to Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01). The County insisted that we apply for a development agreement and development permit which are clearly siting approvals, not land use approvals. Had the County simply confined its review to land use plan and zoning changes, as we requested, we might have avoided the need to seek preemption (although the County's desire to invade EFSEC's lead agency role under SEPA was never capable of a reasonable resolution). Again, there were ways the County could have accomplished this within the context of its Wind Farm Overlay ordinance, but Mr. Hurson refused to pursue any possible way to do so. If in fact, as the County alleges, their process and timeline were clear and consistent, why did they never once in the entire year between January 2003, when we filed our ASC with EFSEC, and January 2004, take the time to articulate their process in writing and attach a timeline?

Q. Mr. White alleges that in December 2003, the County responded to EFSEC's request for a timeline based upon the DEIS issuance in December which they did in January 2004, and that "the time frames in that chart for when the County would project its work to be completed were the same as those disclosed to Zilkha on several occasions Exhibit 50-7 (CW-7)." Do you agree with this allegation?

A. No. Despite many requests, the County never disclosed anything in writing regarding timelines prior to the demand by EFSEC. In fact, Mr. White's referenced Exhibit is the flowchart the County provided in January 2004 in response to EFSEC's request. I

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sent the County a letter dated October 30, 2003, seeking clarification of the timeline (Attachment 27, 'October 30, 2003 Letter from C. Taylor to C. White re: Process and Schedule Review of Application', to Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2001). In the email communication from Mr. White, dated November 5, 2003, that I received in response to this letter and draft schedule, he stated that: "….Kittitas County can not commit to specific project timelines…" (Attachment 28 to Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01.) The flow chart presented major problems for us as the applicant, and EFSEC as lead agency. The flow chart showed numerous "loops" that returned the applicant to "square one" in County review, and it showed the County ruling on the adequacy of EFSEC's DEIS, and hearing appeals on the adequacy of the EFSEC DEIS. The County's attorney also crafted a novel concept of a "functional equivalent" to a Final EIS. We could not understand how this concept was based upon SEPA.

We strongly believed that the County's suggested role in SEPA review was untenable, clearly contrary to SEPA, and gave us grave concerns that the County would never reasonably accommodate our efforts to seek local consistency within the EFSEC process. It also demonstrated to us a disregard for EFSEC's jurisdiction and role as SEPA lead agency. This information is outlined in the Preemption request. After our struggles to gain an understanding of how the EFSEC application could be processed within the context of Kittitas County's local process, the flow chart left us deeply disappointed that the County appeared to have a fundamental quarrel with the EFSEC's decision process and disputed its jurisdiction. When we first received the

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flow chart, and prior to reviewing it, we did express an appreciation that the County had finally produced some form of written explanation of their process. However, we never indicated satisfaction with the content of the flow chart.

The County's flow chart speaks for itself. Mr. White's allegations that in March 2004 he attempted to explain away its intent does not change what it says. His explanation in his testimony does not address the fundamental concern we still have – the County clearly stated its intent to rule on the adequacy of EFSEC's EIS. We believe that the problems this posed for a timely conclusion of the EFSEC process and for a coherent local and EFSEC decision-making process are clear.

Q. Please comment regarding Mr. White's statements regarding alternative sites.

A. We have addressed the alternative location issues in our Request for Preemption, pages 23 – 27. Mr. White references the Desert Claim Wind Power project and the Wild Horse Wind power project. These are not true "alternatives" to the Kittitas Valley Wind Power project. (See Applicant's Request for Preemption in the Matter of Application No 2003-01). Sagebrush Power Partners does not control the Desert Claim site and Wild Horse is not an alternative. Zilkha Renewable Energy's goal is to build approximately 400 MW of wind generation to meet demonstrated regional utility demand for new wind power resources, as demonstrated by the Integrated Resource Plans ("IRPs") adopted by Puget Sound Energy, PacifiCorp, and other utilities. We cannot build a total of 400 MW of efficient wind generation at the Wild Horse location. Furthermore, there are transmission constraints what would make it difficult, if not impossible, to inject 400 MW of new generating capacity onto the grid at that single location.

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Q. Mr. White testifies that you had an opportunity to apply for a conditional use permit. Please explain the reason you did not apply for a Conditional Use Permit (CUP) prior to applying through EFSEC.

A. It is true that when we first met with the County in March 2002, the process for siting a Wind Farm in Kittitas County was through a conditional use permit. In fact, the County had adopted the CUP process for wind power facilities less than one year before they adopted the Wind Farm Overlay ordinance. We met with County staff several times between March and May 2002. It is common to conduct these meetings prior to applying for permits. At the March 14, 2002 pre-application meeting, Mr. White stated that he felt the appropriate path was for Zilkha Renewable Energy to apply for separate conditional use permits (CUPs) for each "site location", i.e. each turbine string. Mr. White said the County would be willing to process the group of CUP applications together and hold a single public hearing for the entire group of permits. Mr. White reasoned that this would enable the County to decide on a turbine-by-turbine basis whether any particular location was acceptable. This would mean that the County could potentially arbitrarily approve some but not all turbine locations, without regard for the overall integrity, engineering feasibility, and functionality of a project. I responded that Zilkha Renewable Energy had significant concerns about this proposed approach to permitting the project and I followed up by detailing our concerns in writing (Exhibit 20 R-1 (CT-R-1)).

In addition to seeking an understanding of how the CUP process would be conducted, and what permits we would need to seek, at the time, we were still completing our site assessment work, including wildlife, plant and cultural resource surveys, and we

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were still gathering wind data as well as evaluating transmission feasibility. All of this information is essential pre-project feasibility work that significantly influences whether an application is filed, how a project is designed, and what environmental information is needed. This information is also absolutely necessary to form the basis of a sound, complete application, ready for thorough public review and SEPA review.

I do not recall stating in April and May 2002 that we were preparing an application that would be submitted "within weeks". I do know that during this period, we were conducting survey work and we were undergoing major discussions with agencies, including the Washington Department of Fish and Wildlife, regarding potential local mitigation. We were also going through the process of evaluating the transmission feasibility of interconnecting the project to the grid. We were seeking clarity not only with the County, but with many others, including wildlife agencies and transmission providers.

Q. What is your response to Mr. White's allegation that Zilkha Renewable Energy "had both the opportunity and time to submit a complete application" in order to vest an application with the County under the Conditional Use Permit process?

A. First, I think it is amazing to face a public planning and permitting agency now trying to paint a negative picture of an applicant who chooses not to rush permits onto the permit counter in order to "beat" changing regulations. Second, it was unimaginable to us that the County would actually adopt an ordinance like they adopted. Given the fact that the County's CUP process for wind power facilities was not even one year old, we did not imagine that the Board of County Commissioners would overturn its decision by adopting a "retread" of the Master Planned Resort process adopted for the

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exclusive purpose of permitting the Mountain Star Project. The process to adopt the new ordinance commenced with a moratorium on any development application permits. Third, while it did become clear to us that the County's regulatory climate was not stable, we felt that it would be somewhat disingenuous to try to slip an application in at the last moment and attempt to vest under regulations that that could change. And, given the changing regulatory climate and the highly political nature of the issues pending before the County, I question whether the County would have deemed an application "complete" under its land use permitting process rules (KCC Chapter 15.A) in time to vest development rights under the CUP rules.

We did in fact initially believe that we needed to construct the project by the end of 2004. However, that was based on our current market assessment at that time. The wholesale electric power market is very dynamic and has changed over time. In public comment regarding the Wind Farm Overlay Ordinance, we did ask that the CUP process stay the same (see Attachment 1 ,'Letter from Chris Taylor to BOCC', to Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01). The CUP process would easily coordinate into the EFSEC process without the need for comprehensive plan and zone changes, and unlike the Wind Farm Overlay process, the CUP process would have been explicitly subject to the County's permitting processing rules adopted to implement the requirements of the Washington Regulatory Reform Act (KCC Ch. 15.A).

It is true that we did not file an appeal of the Ordinance to the Washington Growth Management Hearings Board. As project applicants, we did not believe that the cost and time of such an appeal was a good idea nor did we wish to engage in a legal

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battle with Kittitas County, given our intent to invest hundreds of millions of dollars in the county. Instead, we devoted our resources to seeking defensible permits, then believing that the County would reasonably respond to our efforts to achieve consistency with local land use planning and zoning ordinances. We could never have imagined how difficult it would ultimately be to seek consistency, both due to the unique characteristics of the County's Wind Farm Overlay Ordinance, and due to the difficulty we encountered in working with the County during this process.

Q. Mr. White alleges that Zilkha did not make any attempt to obtain an EFSEC exception to the Kittitas County code prior to the filing their application with EFSEC. What is your response to this allegation?

A. That is not how the process works under EFSEC rules. As I understand it, the typical approach is to file with EFSEC then proceed with attempts to achieve County consistency, so that the time taken up by the two processes would run concurrently.

Q. Did Zilkha consider pursuing a zoning code text amendment modeled similar to the text amendment approved by Walla Walla County for the Wallula Generating Project?

A. Yes. In a meeting with Commissioner Perry Huston on February 7, 2003 (See Chronology pages 6 and 7) I proposed that the County might consider adopting a text amendment, possibly along the lines of that adopted by Walla Walla County for the Wallula Generating Project. Commissioner Huston stated that he was not inclined to pursue this option during a phone conversation between Commissioner Huston and me on 3/18/03 (see page 7 of Exhibit 1, and Attachment 9 of Exhibit 1, 'follow-up

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letter from Chris Taylor to Commissioner Huston regarding the Feb. 7th meeting' of Applicant's Request for Preemption in the Matter of Application No 2003-01. Also see page 12 of Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01.) Commissioner Huston stated again that he did not feel a text amendment was something the BOCC would want to consider at that time. I also proposed the idea February 25, 2003 at a meeting with Dave Taylor, Clay White, and Jim Hurson, but the County staff never showed any interest in discussing this approach (see Attachment 10 to Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01).

Mr. White alleges that an amendment to the Comprehensive Plan would be required, and that a request must be submitted by June 30th of each year to be considered part of the annual amendment process. While we understand that the GMA only allows the County to amend the comprehensive plan once a year except for a limited number of issues such as a new sub-area plan or an emergency, we do not believe that the Comprehensive Plan text and map would need an amendment to simply provide a process for EFSEC to make a determination that an application is consistent with the Windfarm Overlay Ordinance. The County's land use code appears to provide the latitude to the Planning Director to make this determination to allow a zoning code text amendment to proceed, outside of the annual comprehensive plan amendment cycle.

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Q. What is your response to Mr. White's allegation that Kittitas County repeatedly "reminded" Zilkha that "they had a consistency issue that needed to be taken care of if time was an issue for them?"

A. We received e-mail communications from Jim Hurson which inexplicably accused us of deliberately delaying review of our own project. As noted earlier, this is totally false and would be totally contrary to our own interests. There is no logical reason why we would seek to delay permitting of a time sensitive project such as this (Attachment 14, to Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01).) While Mr. Hurson accused us of delaying our own project, as discussed above, we did not immediately file an application with the County because we were seeking clarity regarding the process and schedule, as indicated in our correspondence and meetings with Mr. Hurson and Mr. White during this period. In my e-mail to Mr. Hurson, (Attachment 13 to Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01), I summarized the meeting on February 25, 2003 and clarified that we were eager to move forward with land use consistency, but that we needed a clear understanding regarding process, timeline, etc. before submitting an application. I also stated the key issues why an application was not submitted during a meeting with Mr. Taylor, Mr. White, and Mr. Hurson on Feb. 25, 2003. (See page 10 of Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01.) I stated that we believed it was necessary to have "a clear mutual understanding regarding process, timeline and the interface with EFSEC's process before submitting any application. Such a mutual understanding MUST

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include EFSEC, as any local land use process regarding this project is part of the broader EFSEC site certification process." (From Attachment 13 to Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01.)

Q. Mr. White testifies that the County did not "know what type of application" you were submitting, and that without this information, the County could not provide a process or timeline. How do you respond to this testimony?

A. The County continually used this as an excuse. We have never understood it. They were aware that we were seeking approval through EFSEC and had received a copy of our voluminous Application for Site Certification (ASC) in January 2003 detailing all aspects of the proposed project. We had been discussing the proposed project in detail with the County since early 2002. We attempted, to no avail, to obtain zoning and plan consistency, leaving the site-specific decision to EFSEC. They refused to process any application this way, contending that the County process consolidated a plan amendment, rezone, development agreement and site-specific permit, and that these could not be "decoupled." The County's demand that we declare whether we were submitting an application for local approval or an application for local approval in the context of an EFSEC proceeding was not material to the County accepting our application. The County itself maintained that we must obtain all local siting approvals to be consistent with local planning and zoning regulations. This meant that there was essentially no role for EFSEC in issuing the site-specific permitting decision. And the result through County review would have been identical. This demand was thrown at us every time we requested clarity about the local process, a timeline, and how the process would dovetail with the EFSEC process. We believe

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that it demonstrated Mr. Hurson's dedication to obstruct any progress through EFSEC.

In a fruitless attempt to remove this and other obstacles, we asked the County staff to meet with EFSEC staff to discuss the issues regarding the timing and coordination of the two processes. As Mr. White testifies, the County stated that a meeting "would be premature since [the County] didn't know when [we] would submit an application to the County and [the County] didn't know what kind of application [we] were going to submit." (White Testimony at page 15). Given the lack of progress in our dialogue with the County, we believed that this meeting proposal was a basic request, to coordinate up front, prior to applying to the County. At the time, we were still not in agreement regarding the County's SEPA role in light of EFSEC's SEPA lead agency status. We fundamentally needed to iron that out prior to applying to avoid the problems which we in fact encountered once we did file. And we ultimately decided to file without first resolving these problems, despite our misgivings about doing so in the absence of a clear understanding with the County regarding their land use review process.

The County flatly rejected the request to sit down with EFSEC staff to work out an overall coordinated approach. I believe that such early discussion could have been very helpful in clarifying the process as it related to the EFSEC proceeding. I did indeed call EFSEC staff and attempted to set up a meeting, even though the County (particularly Jim Hurson) refused to coordinate with the EFSEC staff. I mistakenly believed that if EFSEC agreed such a meeting would be helpful, perhaps the County would cooperate and participate in such a meeting.

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Q. Mr. White alleges that at the February 25th, 2003 meeting, he advised you that "a meeting was not needed until such time as an application was filed with Kittitas County." What is your response to this allegation?

A. During that meeting I suggested that getting EFSEC input and involvement would be helpful and suggested a follow-up meeting within the next week that included EFSEC staff to ensure that all three parties agreed on an approach for resolving local land use consistency (see page 10 of Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01). Attachment 11 of Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01, is a follow-up e-mail I sent to Jim Hurson regarding the meeting on February 25th with summary attached (Attachment 10 of Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01). Jim Hurson replied (in Attachment 12 of Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01), that "since we don't yet have the land use application, I think setting up a meeting with EFSEC staff to work out those coordinating issues is a bit premature". In Attachment 13 to Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01, I replied that "we don't believe it is unreasonable to propose one joint meeting of the County, EFSEC staff and us to discuss this very important issue". I am unaware of the details of Mr. White's communication with Allen Fiksdal from EFSEC, but I believe that EFSEC staff concurred that a coordination meeting could be useful, but

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that they certainly could not force Jim Hurson and Clay White to meet if they did not want to do so.

Q. Mr. White accuses you of distributing inaccurate summaries documenting meetings. How do you respond to that allegation?

A. I am not aware of any notes or meeting minutes maintained by the County. The testimony above and Mr. White's testimony demonstrates that documenting communications and commitments became absolutely essential, as the County appeared to change positions over time. Due to the nature of the relationship and the difficulties we were encountering, I took detailed notes during the meetings. Rather than simply keeping them to myself, and since the County did not appear to take any steps to document the communications, I genuinely believed that the minutes or notes would aid us in working out our issues with the County. Rather than respond, as I had requested, with proposed changes, Mr. Hurson responded by stating in an email: "There are numerous other comments and omissions in your summary that I also disagree with, but do not intend at this time to take the time to detail them." (Attachment 14 of Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01). I never received any further comments on those meeting minutes. It became evident that as the County obstructed us and EFSEC, reversed its advice and direction, and refused to clarify the process, my notes or minutes became a source of embarrassment. The County refused to produce meeting minutes or summaries and also refused to review and edit or approve my notes after I forwarded them for their review.

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Q. In his testimony in pages 20 through 23, Mr. White re-states the same allegations made earlier in his testimony, that you delayed your application with the County. Do you have any have any additional response to these accusations?

A. No. This is redundant testimony. I have responded in my testimony above. I do want to make it perfectly clear that Mr. White repetitively describes the same period, not an additional period during which we attempted to resolve application process issues with the County.

Q. Mr. White testifies that the applicant for the Desert Claim project did not have any "difficulties in understanding or working through the Kittitas County land use process." What is your response?

A. I am unaware of whether this is true. However, enXco, the applicant for the Desert Claim project, was not seeking to dovetail their application to the EFSEC process, and they certainly did not face the conundrum of the County's attorney insisting that the County would invade EFSEC's role as SEPA lead agency. It was our efforts to resolve these fundamental issues, and the County's refusal to cooperate with our efforts to do so, that consumed so much time. The fact that we invested so much time, effort and expense in seeking a local resolution demonstrates clearly our commitment to achieve local land use consistency.

As I have stated previously, our intent was always to seek and obtain local land use consistency. Achieving local land use consistency would have significantly accelerated the timeline for EFSEC review of our project and would have saved us considerable expense as well. The "delay" discussed in Mr. White's testimony was

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consumed by our attempts, to no avail, to clarify the process. The time was consumed by us acting on advice and commitments from the County to a process which was then reversed. The time was consumed by the County appearing to understand that it was reviewing administrative drafts, then rejecting them for non-substantive reasons, and the time was consumed by Jim Hurson seeming to agree to a process summarized in cover letters, only to have Clay White reject the applications based upon the content of the cover letters, which attempted to clarify the relationship between the EFSEC and County decision-making processes.

When we finally realized that we could not resolve all issues with the County, we did file a complete, signed application with all necessary content. However, we needed to obtain signatures of landowners. As I described earlier, the land owners on whose property we propose to construct the project do not all reside in Kittitas County and two of them were difficult to reach during that period. The County would only accept signed originals of their own (County) forms, which EFSEC did not require for our application for site certification (ASC). We received signatures from landowners during the period May 9-18, 2003.

Q. How do you respond to Mr. White's allegation that the Desert Claim project is "moving through our process and public hearings will be taking place this fall."

A. I find it ironic. At a County Planning Commission meeting on July 12, 2004, Mr. White proposed public hearing dates for Desert Claim for the last 2 weeks of October 2004. Desert Claim appears to have been pending with a complete application with the County for over 19 months and still no hearings have been held. We do not understand how the County can boast about its expeditious handling of that project, or

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how the County can imply that, but for our preemption request, it would have expeditiously completed its review of the Kittitas Valley Wind Power Project. The time the County is taking to review the Desert Claim project is far greater than that encountered by other Northwest wind power projects seeking local permits.

Q. Mr. White alleges that the Kittitas Valley application was "shorter" than the Desert Claim application. How do you respond to this allegation?

A. Mr. White misses the point and mischaracterizes these two projects. It is not the length of the application that posed problems for us. It was the County's obstruction of EFSEC. It does appear at first glance that Desert Claim's application was more lengthy. However, Desert Claim included a SEPA checklist that is approximately 36 pages in length. Our application did not include a SEPA checklist, because we instead submitted the two-volume EFSEC ASC which contains literally hundreds of pages of detailed studies covering all areas of the environment. Removing the SEPA checklist, the applications are about the same length. However, we provided the entire EFSEC ASC along with our County application, in order to provide up-front all of the relevant surveys and other information. Mr. White mischaracterizes these two applications by neglecting to mention the quantity and quality of this data in our application, included in the ASC, as compared to Desert Claim's application, which anticipated future SEPA review, based upon the SEPA checklist, and therefore did not attach the voluminous information we provided. It should also be noted that the County required that we provide 370 copies of the application in order to deem it complete.

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If it took ten weeks from the date we filed with EFSEC for us to submit a draft application to the County and another three months for the County to deem the local permit application complete. This was mostly because we finally gave up on any attempt to formalize the process, resolve the SEPA lead agency status issue, or reconcile how the County's refusal to de-couple planning and zoning review would dovetail with the EFSEC process. In essence, we were reluctantly forced to apply for a complete, site-specific permit through the County, even though that is exactly what EFSEC was created by the legislature to undertake. We were unable to reconcile the fact that the County forced us into two totally parallel and redundant permitting tracks that made no sense together. And we were compelled to proceed even though the County never meaningfully agreed to EFSEC's SEPA lead agency status. We hoped that the SEPA issues could be resolved at later stages in the process. However, as is clear from the County's January 13, 2004 flow chart, the County remained committed to invading EFSEC's lead agency status, including empowering the County to make a determination regarding the "adequacy" of the EIS, and to hold separate, local appeals on the DEIS.

Q. How do you respond to Mr. White's testimony regarding the County's alleged discussion of "timelines" to process the local application?

A. Until we received the flow chart, in January 2004, and even after the County accepted our application, the County refused to commit to any timelines, particularly in writing. That is precisely why EFSEC finally demanded a written timeline from the County. Even in his testimony, Mr. White asserts that the timeframe for a local decision depended upon the County's own determination of the adequacy of the EFSEC EIS (White testimony at 25.) On the several occasions when the County

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described its process and hearing procedures, key details appeared to change over time. Mr. White alleges in his testimony that "we would probably have our process completed by January 2004 because our total process time was four to four and a half months." (White testimony at page 25). This claim is difficult to reconcile with the obvious fact that the Desert Claim application has been languishing with the County for over a year and a half. It also implies that the County would have accelerated our application ahead of Desert Claim, which we never demanded, and which we doubt would have occurred. Moreover, the County's flow chart itself belies this allegation.

Q. Mr. White alleges that the County process in total "would take about 4 to 4 ½ months from the time the county received a functional equivalent to FEIS." Did you discuss the County's decision to base its decision on a "functional equivalent to a FEIS?"

A. Yes. It was always our interpretation that under the EFSEC statute and rules, the County did not need an EIS to make its local decisions. However, we could not obtain a consistent, reasonable interpretation of the County process, they refused to acknowledge the limitations of their SEPA review in EFSEC proceedings, and we saw no alternative, however, other than to go along with this process, despite our strong belief it was contrary to the law. In fact, we found no basis for the County's ad hoc construct of a "functional EIS," and the County's attorney fundamentally quarreled with the explicit SEPA exemption for local decisions made during EFSEC review. The County's insistence on response to comments on the DEIS being issued by EFSEC before they would proceed and for inclusion of off-site alternatives is, as I understand it, largely what delayed the issuance of the DEIS. In fact, the County made it very clear that it would not conduct its local decision-making process until the responses to comments were issued (which in EFSEC occurs after the final

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hearing), and until the County ***itself*** made a determination of the adequacy of the EFSEC EIS. While all of the implications of this process are not apparent, this suggested that the County process could not be concluded until completion of the EFSEC adjudicative hearing. This is utterly untenable, and if implemented, would have created chaos for EFSEC's review of the Project.

Q. Please explain the off-site alternatives analysis issue and its outcome.

A. In July, 2003 the County took the position that the EFSEC DEIS was inadequate because it did not include an offsite alternatives analysis. To my knowledge, EFSEC has not historically included such analysis in prior EISs for private projects seeking EFSEC certification. While EFSEC is fundamentally in control of the EIS (and not the Applicant), the County's position clearly impacted our ability to proceed. The County was adamant about this "requirement." We and EFSEC agreed to conduct include an offsite alternatives analysis to keep the process moving forward. We did not agree that it was necessary, only that we would cooperate with this request to keep the process moving forward. It was less difficult and time-consuming for us to cooperate than to prolong the process with yet another lengthy dispute with the County. We (and EFSEC staff) went along because the County offered no alternative. To my understanding, our legal counsel never agreed that the off-site analysis must be completed, only that it was debatable, and that it was best to complete the process to avoid obstruction and delay, and to avoid even a marginal appeal risk.

In the meeting 08/27/03 with the County, we did determine that the best way to complete the off-site analysis was to do so in collaboration with the Desert Claim

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applicants, and to include the Wild Horse project. We said we understood the political pressures the County was under, but I don't recall ever agreeing with them on the legal necessity. We stated that we did not believe that an off-site alternatives analysis was needed as a matter of law, but that we would go along with it in the interest of seeking cooperation form the County. While Mr. White alleges that the absence of the off-site analysis was a "huge fundamental flaw," we never viewed this as a "huge fundamental flaw." I believe that EFSEC staff shared our opinion.

Q. Did you initiate with the County any process to discuss a draft development agreement?

A. Yes, in part. We discussed the concept with the County, including the County's desire for us to pull mitigation measures from the EIS for incorporation into a development agreement. However, at the time, the development agreement was the least of our concerns about the timing and process. While it is a strange thing to undertake in the context of an EFSEC proceeding, we were prepared to do so. However, we did not consider work on a draft development agreement to be particularly time-consuming or difficult. We started drafting it, and then the County filed its flow chart, making clear that the County's decision-making process would not even commence until the response to DEIS comments were issued, the County deemed the EFSEC EIS to be "adequate," and the County concluded its own, independent appeal process of the EFSEC EIS. In this context, little purpose was to be served in proceeding with a development agreement.

Q. Are you aware of whether EFSEC staff agreed that "a response to comments [regarding the DEIS] would be appropriate if the draft was not sufficient?"

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A. Not exactly, no. The written record does not appear to support Mr. White's recollection in this regard. According to Mr. White's Exhibit 50, Irina Makarow did not use the word "appropriate." Ms. Makarow's October 16, 2003 e-mail states: "The answer is Yes, we can produce a "response to comments" after the DEIS comment period. However, we would have to label it 'draft' or 'preliminary' pending the adjudicative hearings and the timing requirements of EFSEC WAC 463-47-060 (3). We will work into our contract with Shapiro & Associates. But, until we see exactly how many comments are received and their content, I can't make any promises on how long it will take, but we will do our best to get it out as quickly as possible. Irina".

Q. Do you have a response to Mr. White's testimony regarding the alleged "glaring deficiencies" in the DEIS?

A. First, to make clear, EFSEC is the lead agency, and EFSEC staff, working with EFSEC's independent consultants, has completed the DEIS, not the Applicant. Consequently, I believe EFSEC staff is in the best position to respond to these accusations. However, I would refer to the summary of "inconsistencies" between the County's review of the EFSEC EIS and the County's own DEIS issued for the Desert Claim project. (Exhibit 3 of Applicant's Request for Preemption in the Matter of Application No 2003-01) which clearly demonstrates the obvious double standard the County applied to the Kittitas Valley vs. the Desert Claim DEISs.)

I will respond to Mr. White's "highlighted issues" as follows:

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1) ***Size of the project proposal***: The site layout and maps, which detail precisely where proposed facilities are to be located, are the same in our ASC, the EFSEC DEIS, and our County application. Mr. White engages in a semantic argument over different ways of describing the "project area." The maps and affected parcels never changed. Also, we have no control over what language Shapiro and Associates (EFSEC independent consultant) used in the DEIS, as we never reviewed the DEIS before it was published. Furthermore, I do not recall Mr. White ever raising this issue before including it in his testimony.

2) ***Light and Glare and FAA lights***: The EIS is focused on the anticipated size of the wind turbine generators (1.5 MW) while addressing the environmental impacts of other potential turbine sizes. There is no flaw with the DEIS. We submitted a request to FAA to review the project for potential impacts to air navigation based on the anticipated size of wind turbines to be used for the project. In the event that the size of turbine actually used for construction differs from that size (1.5 MW) we would request that FAA revise their analysis and confirm no hazard to air navigation before proceeding to construction. We anticipated this would be a condition of any permit from EFSEC. The regional FAA office has expressed to us that the agency is not inclined to review numerous variations of a potential project.

3) ***Agency issuing permits***: Mr. White complains that "EFSEC states that they are the only non-federal agency authorized to permit the proposed project," and alleges that "[t]his is not true, as Kittitas County is also a non-federal agency authorized to permit this project." This demonstrates the problem. Kittitas County has refused to acknowledge EFSEC's jurisdiction in this proceeding, and has

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repeatedly sought to obstruct EFSEC's process. There is nothing "untrue" about the statement, and I cannot understand how it is relevant to the adequacy of the EIS.

4) ***Impact of the proposed action and radio interference:*** The County has demanded clarification on this issue, alleging that it is needed for the response document as the DEIS stated that they were still waiting for some information from the Applicant. We commissioned a detailed analysis of potential telecommunications interference impacts of the project by a well recognized consulting firm that specializes in such matters, Comsearch. Comsearch representatives traveled to Kittitas County to conduct extensive on-site analysis and research. This analysis was included in our application to EFSEC and was available to EFSEC's consultant in the drafting of the DEIS. By contrast, the County's DEIS for the Desert Claim project contains no field measurements or detailed analysis whatsoever on this topic. Yet the County contends this analysis is lacking in the EFSEC EIS.

5) ***Meteorological Towers:*** Mr. White alleges that the EIS does not identify the "specific number of towers and locations are needed in order to assess if these will have an impact on the environment." That is not true. Their locations are clearly indicated on the site maps included with our EFSEC and County applications. The DEIS notes that it is possible that not all the proposed permanent meteorological towers would be needed, but the DEIS does indeed indicate where they would be situated. Exhibit 1, 'Project Site Layout' and Exhibit 2, 'Aerial Photo with Project Site Layout' of the EFSEC ASC clearly shows 9 permanent met towers on the maps within the Project area. On page 11 of the ASC, Section 2.3.8 we state that the Project design includes 4 permanent met towers. Figure 2-1, 'Project Site Layout', in the DEIS shows 9 permanent met towers. In Table 2-1, 'Permanent Disturbance

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Footprint for Range of Proposed Turbines', on page 2-8 of the DEIS it lists the number of met towers proposed as *"Up to 9"*. The DEIS also states on page 2-17 that *"Applicant proposes to erect up to nine permanent met towers in the project area, although it is likely that only 4 would be constructed. The potential location of the nine proposed permanent met towers is shown in Figure 2-1"*. Also, Exhibit 2, 'Project Site Layout', of the County Development Activities Application shows 9 permanent met tower proposed and their location.

Mr. White states: "This project is a huge zoning and land use issue for Kittitas County How could Kittitas County make a land use decision on a 5,900-7,000 acre rezone and a 5,900-7,000 acre comprehensive plan amendment when we do not even know where the meteorological towers are going to be placed?" The towers are clearly shown on the maps. I would also note that the County allows temporary meteorological towers (which are essentially the same type of towers) with no review or permit. As stated below, we dispute the characterization that the project is a "huge zoning and land use issue" for the County.

6) ***Discussion of project design scenarios.*** Mr. White alleges that the DEIS does not discuss all potential project design scenarios. We strongly disagree. The DEIS contains thorough descriptions of the Lower, Upper, and Middle Scenarios which are clearly described in the following Sections: Fact Sheet, 1.4.1 'Proposed Action', 2.2.1, 'Project Overview'. Figure 2.2 clearly illustrates the dimensions and other physical information for the three turbines used in the three different scenarios while Table 2-4, 'Wind Turbine Features, Kittitas Valley Wind Power Project', discusses aspects of the three different technologies.

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Section 2.2.4 'Construction Activities' – discusses any differences in construction under the different scenarios (e.g. Site Preparation: Road Construction and Staging and Laydown Areas), and clarifies instances where the different models used will make no difference (e.g. Construction Schedule and Workforce).

2.2.5 Operation and Maintenance Activities – Also discusses maintenance and operations workforce requirements under different scenarios

Additionally, the impacts of the three scenarios are discussed in the 'Impacts of Proposed Action' section of each Chapter of the DEIS and the tables listed below all provide information on each of the three scenarios, thus providing the reader a very thorough understanding of the impacts and scope of each of the scenarios during both construction and operational phases:

Tables 2.1 and 2.2 list disturbance calculations for all three scenarios

Table 2-6:	Typical Spread-Footing Type Foundation Dimensions
Table 3.1-1:	Summary of Potential Earth Resource Requirements and Potential Impacts
Table 3.1-2:	Estimated Cut and Fill Requirements for Proposed Turbines (Cubic Yards)
Table 3.1-3:	Estimated Gravel/Fill Import Quantities for Proposed Turbines (Cubic Yards)
Table 3.1-4:	Estimated Quantities for Rock Export or Onsite Crushing for Proposed Turbines (Cubic Yards)
Table 3.2-5:	Summary of Potential Construction Impacts: Vegetation, Wetlands, and Wildlife
Table 3.2-6:	Temporary Vegetation Community Impacts
Table 3.2-7:	Permanent Vegetation Community Impacts
Table 3.2-9:	Impacts at Potential Stream Crossings (square feet)
Table 3.2-10:	Summary of Potential Operations and Maintenance and Decommissioning Impacts: Vegetation, Wetlands, and Wildlife
Table 3.2-11:	Summary of Projected Annual Mortality of Raptor, Passerine, and Bat Species Associated with Turbine and Meteorological Tower Collisions
Table 3.3-1:	Summary of Potential Water Resources Use and Potential Impacts
Table 3.4-1:	Summary of Potential Health and Safety Risks
Table 3.5-5:	Summary of Potential Energy and Natural Resources Requirements
Table 3.6-2:	Summary of Potential Land Use and Recreation Impacts
Table 3.7-9:	Summary of Potential Socioeconomic Impacts
Table 3.7-11:	Operations and Maintenance Labor Force (Number of Personnel)
Table 3.8-1:	Summary of Potential Cultural Resources Impacts
Table 3.10-4:	Summary of Potential Transportation Impacts

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Table 3.10-5: Construction Trip Generation
Table 3.11-1: Summary of Potential Air Quality Impacts
Table 3.13-2: Summary of Potential Construction Impacts: Public Services
Table 3.13-3: Summary of Potential Operations and Maintenance, and Decommissioning Impacts: Public Services

Rather than restate the possible range and all the accompanying details at every point in the ASC where the number, size or capacity of turbines proposed for the Project are referenced, the Applicant has used the most likely scenario of 121 units of 1.5MW WTGs. We do not believe there is any lack of clarity and this is a common practice in permitting wind farms in light of the rapidly evolving nature of wind turbine technology.

Mr. White again, and repeatedly speculates that we had "always planned to file for preemption." I have responded to this speculative allegation above. This would make no business sense. I find this speculation highly objectionable and not helpful to this process. For us, the problem was not just the timing considerations, but more importantly, the substantive issue of the County dictating EIS conditions to EFSEC when they (Kittitas County) are not the lead agency.

Q. Mr. White alleges that a zoning decision is needed to address compliance, rather than just a siting permit. What is your response to this testimony?

A. Less than one year prior to enacting the Wind Farm Overlay Ordinance, Kittitas County adopted an amendment to its zoning code to address all of these issues through a conditional use permit. The County BOCC adopted the CUP process following full SEPA review, public notification and hearings before the Planning Commission and the BOCC. The CUP process is used for siting wind farms in

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virtually every other Oregon and Washington county that I am aware of. Zoning and plan amendments and variances are not typically required for wind power facilities. I believe that where wind energy facilities are allowed through a CUP, and where commercial scale wind towers are expected (as always) to exceed the height of a barn, most reasonable planning jurisdictions would consider the height limitation of "structures" to be applicable to barns, homes and the like, not wind turbine towers. Moreover, hundreds of electric transmission and cell phone towers have been permitted in Kittitas County. I doubt that Comprehensive Plan and zoning code amendments were required for their approval. If a height variance is needed to effectuate a use specifically allowed, a jurisdiction can address the issue in that fashion as well. Many opportunities are available to jurisdictions to resolve permitting issues of this kind, so long as those jurisdictions are committed to taking a reasonable approach. If the height issue were a major impediment, I do not understand how the County planned to approve Wind Turbine Generators via a CUP before they adopted the new overlay ordinance.

I believe that the Project meets all the prescribed County building setback requirements within each of the applicable zoning districts. We addressed these in the ASC and in the County Application, Section 2 – Application for Development Agreement. No zoning action or plan amendment should be needed.

Mr. White alleges that "[t]he placement of a windfarm in Kittitas County would be another example of an issue that is more of a zoning issue rather then a siting issue," contending that "KCC 17.61A (Windfarm Resource Overlay Zone) regulates the placement of windfarms in Kittitas County and the necessary permits required to operate such a facility." Mr. White states that "[t]he placement of a windfarm in

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Kittitas County is not permitted in either the Forest and Range zone or Ag-20 zone without receiving the required permits as shown in KCC 17.61A. That is a zoning issue, not a siting issue."

The County refused all of our efforts and suggestions to "decouple" the alleged zoning issues from the siting issues, and argued that these were inextricably interconnected. A wind power facility does not result in a change of land use. Unlike a major gas or coal fired power plant or nuclear facility, agricultural uses continue under and surrounding a wind power project. I can not discern any logical reason for the provisions of the Kittitas County code that allow for natural gas, oil, coal or nuclear power plants to be permitted by the Board of Adjustment via a Conditional Use permit process in Agriculture-20, Forest and Range, Commercial Agriculture or Commercial Forestry zones per KCC 17.61.020 while wind farms are subject to a much more complicated and onerous siting and zoning process (KCC 17.61A et seq). The construct of a sub-area plan amendment and rezone is an artifice unique to Kittitas County, which puts only wind energy facility applicants in serious jeopardy of the kind of capriciousness we have faced in Kittitas County. Eleven months before the County created this artifice, the County did not consider these projects to constitute a major "zoning issue."

The County's "criteria" for approving or denying wind energy facilities are essentially conditional use criteria. However, the very significant distinction is that CUP criteria are typically applied through a regular permitting process, ***not*** through a highly discretionary legislative planning and zoning process. Hence, the due process protections typically afforded to applicants in permitting processes are absent, and the criteria become an unbridled and arbitrary test, potentially influenced by discussions

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occurring outside of the public permitting arena. It is my opinion that this is the very antithesis of appropriate zoning and permitting action. As I understand it, comprehensive planning and zoning are about making proactive decisions prior to permitting, concerning where certain uses and activities are allowed.

Mr. White is correct that under the County's process, the zoning code "evaluates all proposals by the following zoning standards 1) The proposal is essential and desirable to the public convenience; 2) The proposal is not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood; and 3) The proposed use at the proposed location(s) will not be unreasonably detrimental to the economic welfare of the county and it will not create excessive public cost for facilities and service." (White testimony at pages 36-37). This is the problem. These determinations for specific development proposals are not typically made at a legislative planning and zoning level. Applied through a legislative planning and zoning process, these "criteria" are totally vague, subjective and lend themselves to arbitrary and capricious interpretation. There are no objective, quantifiable standards at all that an applicant can rely upon.

Mr. White alleges that the County "set up a consolidated hearing process that has been used before and works well." (White testimony at page 38). To my knowledge, this process has never before been used for a wind farm. It was established for one use – the Mountain Star resort- in order to avoid GMA violations for extending services deep into a rural area. It is my understanding that the Mountain Star project took many years to get permitted, including prolonged appeals.

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Mr. White alleges that the applicable zoning districts "do not allow windfarms without proper permitting." Mr. White contends that a wind farm cannot be placed in Kittitas County "when our codes set up to regulate uses shows that the use is not permitted. For our Board of County Commissions to make a decision on a request for a rezone of over 5,900-7,000 acres, we need an environmenta1 document adequate to make such a decision. We were not given that opportunity," (White Testimony at page 38). This is the very crux of the disagreement, and shows why we were unable to obtain consistency through all reasonable efforts. Aside from the inherent problems with requiring a sub-area plan amendment and a rezone for a site-specific development application, the County simply never agreed with EFSEC's lead agency status under SEPA, and they continued to consider our project a "rezone" seeking to change the use to something other than agricultural use. Because the County would not even consider ways of de-coupling the plan and zoning decisions from the site-specific decisions (typically made through a CUP), or of proceeding without making its own determination regarding the adequacy of the EFSEC EIS, our reasonable efforts to seek consistency were doomed to failure.

Q. Mr. White testifies that prior to the December 15th, 2003 regular EFSEC meeting when the County was asked to prepare a "consistency schedule for EFSEC to review," that the County had completed such a schedule "many times for Zilkha staff." Is this true?

A. No, it is not. The County refused to do so, despite being asked many times. While Mr. White's testimony appears to be supported by many documents, I find it telling that he does not attach one written schedule to prove the veracity of this statement. It is untrue that the County "certainly let Zilkha know how long our process would take

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from the time we could move forward with hearings, we just didn't know when EFSEC would be completed with their portion." The one time I tried to draft such a schedule based on the County's verbal comments, they refused to discuss it (see Attachment 28, 'November 5, 2003 email from C. White to C. Taylor', to Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01). On October 30th I sent a letter to Mr. White with a draft schedule included based on comments from County staff made at a meeting on October 15th. In it I stated, "We need to know if this (the draft schedule) accurately reflects the County's proposed process and schedule. If not, please indicate what the accurate process and schedule are". (Attachment 27, to Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01). In the November 5, 2003 email from Clay White to myself, he stated that he is waiting for the DEIS and "cannot commit to specific project timelines."

Q. When the County finally did prepare a flow chart as requested by EFSEC, do you recall any comment you or Darrel Peeples made?

A. I do not know what Mr. Peeples may have said. However, I believe that prior to reviewing the flow chart, we expressed an appreciation that we finally had a document that attempted to describe the timing and process of the County's review. Given the nature of the flow chart as discussed above, I seriously doubt anybody representing Zilkha Renewable Energy would have been "very pleased with the flow chart." To me, this is totally counterintuitive. EFSEC asked for a schedule and process. Given our history with the County on this issue, I did not consider it a

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"draft" for negotiation or discussion, nor did Mr. Hurson or Mr. White make any such comments at the EFSEC hearing when the flow chart was presented, that would imply that this was some sort of "draft" that was open to discussion. EFSEC requested and obtained the County's flow chart for its process, and the flow chart included the County expropriating the Council's role as SEPA lead agency. This was totally consistent with our history of discussion with the County. There appeared to be little to discuss.

We did ask Allan Walker (01/19/04) to facilitate a meeting with Kittitas County to try to reach an agreement on process and timeline. Mr. Walker is the Executive Director of the Ellensburg Chamber of Commerce. We believed that he might serve a useful role as a disinterested mediator. Mr. White admits that Mr. Walker called him and let him know that I wanted to set up a mediation meeting. Mr. White testifies that that he "didn't see a reason why he should attend since Mr. Walker has no experience in land use matters as far as I could tell." We asked Mr. Walker to mediate because the County appeared to continually change its position, would not provide meeting summaries, would not approve or provide constructive comments on our meeting summaries, and would not come to terms with us or EFSEC staff for a reasonable process. Having this discussion through an intermediary was essential, in part because other than Mr. White and Mr. Hurson, there were no other County officials for us to turn to for assistance in resolving the dispute. Mr. Hurson had instructed the BOCC not to talk to any representatives of Zilkha Renewable Energy, even one on one, after we filed our application with the County, thus making it impossible to discuss the matter with anyone other than himself or Mr. White.

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We did not contact Mr. White further because we determined that the only reason they would not meet with Mr. Walker in the room was because they were reluctant to have a neutral third party there who could attest to what was said.

Q. Mr. White states that Zilkha Renewable Energy could have applied for a simple text amendment in 2002. What is your response?

A. As stated above, I met with BOCC Commissioner Perry Huston regarding this proposal on February 7, 2003 (See Chronology). I proposed that the County might consider adopting a text amendment, possibly along the lines of that adopted by Walla Walla County for the Wallula Generating Project. Commissioner Huston stated that he was not inclined to pursue this option (See page 7 of Exhibit 1 and Attachment 9, 'follow-up letter from Chris Taylor to Commissioner Huston regarding the Feb. 7th meeting' to Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01. Also see page 12, regarding the telephone conversation between Chris Taylor and Commissioner Huston on 3/18/03, of Exhibit 1, 'Chronology of Kittitas County Approach to Wind Farm Development,' of Applicant's Request for Preemption in the Matter of Application No 2003-01). Commissioner Huston stated again that he did not feel a text amendment was something the BOCC would want to consider at that time. With this clear opposition, I felt it was pointless in applying and would only antagonize the County.

Q. Do you have any comments regarding the Mr. White's allegations regarding the "other differences between the Wallula project and the Kittitas Valley Wind Power project" (White testimony, page 43)?

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A. Mr. White alleges that we propose to "change both the zoning and land use on over 5,900 to 7,000 acres" which "is a huge land use and zoning issue" that does not "compare to the Wallula project where neither the land use nor the heavy industrial zone designation needed change." While I cannot testify from personal knowledge regarding the Wallula project, it is only because of Kittitas County's artifice of plan and zoning inconsistency that wind farms uniquely require comprehensive plan amendments and rezones while facilities such as the Wallula Project do not. The Kittitas Valley Wind Power project simply will not result in a change in underlying land use whereas a large fossil fuel plant clearly would. All existing agricultural practices can and will continue around the turbines, roads and related equipment, which will occupy about 2% of the entire Project area. This "change" was not considered a "huge land use and zoning issue" when the County duly amended its code to enact the CUP process for wind power facilities, only 11 months before enacting the Windfarm Overlay Ordinance. We dispute that there is a "huge issue" as described by Mr. White. To the extent such an issue exists, all ramifications are being duly considered in these proceedings. I do not understand how the relative megawatts of nameplate capacity for the Kittitas Valley Wind Power Project versus the Wallula Generating project has any bearing on this issue. (White testimony at page 7).

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